



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 16, 2006

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Conyers:

This is in response to your request for information concerning the upcoming local elections in New Orleans, Louisiana. We appreciate your interest in this issue and want to assure you that the Department of Justice is doing everything within its authority to safeguard the rights of all New Orleans voters.

Since shortly after Hurricane Katrina hit land, the Civil Rights Division has been working closely with state and local officials and various civil rights organizations to address the unique voting-related problems confronting the City of New Orleans. We are acutely aware of the difficult, even unprecedented, circumstances facing voters in and from the area, and the staff of the Civil Rights Division is making every effort to minimize the problems for eligible voters who seek to cast ballots in the upcoming election.

Beginning on January 24, 2006, and continuing through March 10, the State of Louisiana submitted for pre-clearance under Section 5 of the Voting Rights Act a series of new election procedures for the upcoming elections in New Orleans, and information supporting those changes, all of which were designed to ameliorate voting conditions for individuals displaced from their homes and the city because of Hurricane Katrina. The proposed election procedures enjoyed the endorsement of the Louisiana Legislative Black Caucus. The Caucus characterized the State acts in question as "a progressive effort to enfranchise displaced voters through changes in absentee voting by mail, authorization of early voting at satellite offices in various parishes, and authorization for certain displaced voters to be treated like members of the United States [armed] service or persons residing outside the United States for purposes of absentee voting by mail." Minority members of the Louisiana House and Senate were *unanimous* in casting their votes for the election procedures.

The Department of Justice has a rather narrow role in evaluating voting changes submitted by covered jurisdictions, like Louisiana, pursuant to Section 5. The Department's function is merely to examine whether the change is retrogressive, *i.e.*, whether the purpose or effect of the change is to put racial minorities in a position inferior to the one they occupy under the status quo, as compared to non-minorities, *vis a vis* their ability to elect their candidates of choice. Therefore, in the present case, the law permits the Department of Justice to object to the new procedures under Section 5 only if the Department determines that the State of Louisiana has not met its burden of showing that the position of minority voters in the 2006 New Orleans elections will not be worse *with* the changes that it would be *without* them. The Voting Section of the Civil Rights Division has concluded that Louisiana has met its burden under Section 5, and State and local officials were informed today that the proposed procedures have been pre-cleared.

Of course, other provisions of federal law provide a remedy if federal rights are unlawfully affected by State action. And before the proposed procedures were submitted to the Department for Section 5 pre-clearance, competing federal lawsuits were filed under Section 2 of the Voting Rights Act in the U.S. District Court for the Eastern District of Louisiana. In one suit, the plaintiffs alleged that it would be racially discriminatory to postpone the election, while in the other suit, the plaintiffs maintained that it would be racially discriminatory to move forward. Voters of New Orleans were represented in those cases by highly experienced counsel, including attorneys from the Advancement Project, the NAACP Legal Defense and Education Fund, and the American Civil Liberties Union. The federal judge presiding over those consolidated cases ruled that the proposed plan for New Orleans does not violate Section 2 of the Voting Rights Act. In making this determination, the court concluded that the legislative measures adopted by the State, which the Department pre-clears today, were sufficient to address the requirements of Section 2.

Some have expressed concerns over the fact that the State had begun implementing certain electoral procedures (*e.g.*, the State and Parish initiated candidate qualification, issued notice to voters, etc.) prior to receiving pre-clearance under Section 5 from the Justice Department. This is not at all uncommon. In many States, the schedules for special elections are so compressed that it is essential for steps to go forward absent Section 5 pre-clearance – for example, where a polling place burns on the eve of an election. In such cases, of course, authorities proceed at their own risk. If the procedures are, in fact, objectionable, the result may be to void the election.

Concerns also have been raised about the circumstances that voters will face, and the steps that the State of Louisiana could have taken, in the upcoming election. For example, the State added early voting locations in 10 parishes, but declined to add satellite locations outside the State. Although the State eased the pre-existing restrictions on absentee voting, some urged the adoption of even greater accommodations for displaced voters. And while the State added procedures to notify voters of their newly-created rights and of the procedures for voting absentee, some maintain that more could have been done to meet the needs of these voters.

The State may well have done more under the circumstances. As set forth above, however, a federal court concluded that the State's plan did not discriminate under Section 2 of the Voting Rights Act. The relevant legal question under Section 5 of the Voting Rights Act, moreover, is not whether the procedures could be better. Nor is it even relevant under Section 5 whether the procedures violate Section 2 or any other substantive provision of the Voting Rights Act. Rather, the sole Section 5 inquiry is whether New Orleans voters would be better off without the proposed satellite voting locations; whether such voters would be better off without the eased rules on absentee voting; and whether such voters would be better off without the other provisions enacted by the State to ameliorate voting conditions for the displaced individuals.

Another issue of concern is the safety of polling places in New Orleans. This point is extremely well taken, and we have communicated with State and Parish officials about a number of sites. These sites are being replaced with sites where the health and safety of voters will not be threatened and where elections can properly be held. In the nature of things, a substantial number of voting precincts are being consolidated into new polling places which, superficially, have very large numbers of registered voters. Of course, the vast majority of these voters no longer are present in their home precincts, and their old polling places, if they still exist, are unfit for human use. The new sites clearly are a better opportunity for such voters who remain in the New Orleans area than are the former sites.

It is important to note the efforts undertaken by the Civil Rights Division -- above and beyond the traditional Section 5 review -- to ensure smooth elections in New Orleans. For example, early last fall, the Division began communicating with the Federal Emergency Management Agency ("FEMA") about the need to release the agency's information about displaced individuals to the Louisiana Secretary of State so that the State could contact those persons and provide them with information on how to register to vote and/or cast ballots. The Civil Rights Division's Voting Section was instrumental in facilitating discussions between FEMA and the State and overcoming concerns about the confidentiality of FEMA's list.

In November, the Chief of the Voting Section, John Tanner, traveled with one of the Section's trial attorneys to Louisiana to tour the affected parts of New Orleans with State Senator C.D. Jones and the Secretary of State. They later met with staff members from the Offices of the Secretary of State, Attorney General, and Members of the Louisiana Legislature to stress that state officials, in developing electoral plans, needed to be very sensitive to members of the minority community and to actively seek input from community leaders every step of the way.

The Civil Rights Division also discussed the physical problems involved in conducting an election in New Orleans, such as the challenges for finding acceptable polling places, the need to handle a dramatic increase in the number of absentee ballots, and many other details.

In addition, the Voting Section has stayed in close communication with leaders from the Louisiana legislature and local civil rights organizations. Between November and now, for instance, Section Chief John Tanner and the Section's trial attorneys have had numerous calls and personal meetings with Senator Jones, who has been the main sponsor of all or most Katrina-related legislation in the Louisiana Senate, State Representative Willie Hunter, and with others. The Voting Section similarly has had multiple discussions with Ernest Johnson, the director of the Louisiana NAACP Chapter. The Section contacted Mr. Johnson in November and let him know that we were monitoring the situation in Louisiana and urged him not to hesitate to phone us if an issue presented itself; numerous follow-up calls have occurred between November and now. The Section also extended the same invitation to the chairpersons of the Louisiana Democratic and Republican Parties, as well as the NAACP Legal Defense and Education Fund, the Advancement Project, and others.

For the last five months, Mr. Tanner and the Section staff have also been in constant discussions with Louisiana state officials and have provided them substantial input about how to make the upcoming election process as fair and equitable as possible. Specific initiatives that developed through these communications included:

1. stressing the importance of scheduling dates for the elections as opposed to having an open ended postponement;
2. extending the early voting period;
3. providing a Baton Rouge address for absentee ballots to be sent (because ground mail can be sporadic in parts of New Orleans);
4. designating the Secretary of State's staff to assist New Orleans election officials with administrative workload, and providing physical office space in Baton Rouge for New Orleans registration and absentee ballot work;
5. providing staff from the Secretary of State's office to supplement poll commissioners for New Orleans elections;
6. recruiting commissioners from other parishes to supplement Orleans parish polling officials in Orleans parish elections;
7. strongly encouraging, and recommending standards for and content to be included in, a voter outreach program. Examples of the recommendations included:
 - provide displaced voters the same rights as military voters to vote absentee by removing the justification requirement to vote absentee;

- remove the requirement that a first-time voter who registered by mail must vote in person;
- designate satellite voting locations throughout the State for early voting;
- send letters to all displaced voters providing information about their right to vote, how to vote in person, early voting periods and satellite locations, and how to vote absentee (voters are identified by cross-referencing registration books with FEMA list and Postal Service change of address information.);
- implement a toll-free 800 number to answer election-related issues, and increase staff in the Secretary of State's office to ensure all calls are answered;
- advertise in statewide free parish journals;
- issue press releases to state and national media;
- update polling place locator on the Secretary of State's website;
- post signage in New Orleans notifying voters that certain polling places have changed; and
- launch a publicity campaign in Louisiana, Texas, Arkansas, Georgia, Mississippi, Tennessee, California and Florida (*i.e.*, States where the highest concentration of evacuees are located according to information gleaned from FEMA list and Postal Service change of address data).

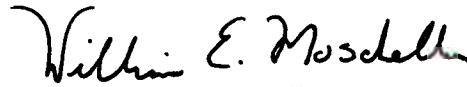
We certainly do not suggest that a number of positive steps would not have been taken without the intervention and participation of the Civil Rights Division. We list these examples merely to suggest the breadth and nature of our involvement.

Although the Civil Rights Division has now pre-cleared the election plan, the Division's work in New Orleans is by no means done. Indeed, the Civil Rights Division plans to send a team of attorneys and staff to New Orleans to monitor the elections in April (and any May run-off), and will dispatch observers from the Office of Personnel Management to all areas that have been certified for such coverage under the Voting Rights Act. The Division is also working closely with the United States Attorneys' Offices for the Eastern, Middle, and Western Districts of Louisiana to ensure that Voting Section staff are contacted immediately regarding any election related issues that might arise.

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The Department of Justice will continue to work diligently to serve New Orleans voters. The Civil Rights Division plans to honor requests to monitor the elections themselves, and has reached out to identify specific locations and circumstances on which to focus. We welcome any information you may have that will help us do our job better.

Sincerely,


William E. Moschella
Assistant Attorney General

cc: The Honorable F. James Sensenbrenner, Jr.
Chairman